IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL Writ Petition No.27 of 2006

Ramesh Manohar Nirgun .. Petitioner
vs
Mun Corpn of Gr Mumbai & ors ..Respondents

Ms. Sumedha Rao for the petitioner.

Mr. K.K. Singhvi, Senior Advocate with Ms P.A. Purandare for respondent Nos. 1 to 3

Mr.Sayyed AGP for respondent No.4.

Ms Kiran Bhagalia for respondent No.5.

CORAM: H.L GOKHALE,Acg C.J. ,&
V.M.KANADE, J.
DATE: February 14, 2007.

P.C.:-

Heard Ms. Rao in support of this petition, Mr. Singhvi for respondent Nos. 1 to 3, Mr. Sayyed AGP for respondent no.4 and Ms. Kiran Bhagalia for respondent No.5.

2. The petitioner is a resident of Dahisar in north Mumbai. The petition is filed drawing the attention of this court to the unfortunate washing away of a foot overbridge in Dahisar (East) in the flood in Mumbai on 26th/27th July 2005. The petition prays that appropriate inquiry be directed and the amount paid for

construction be recovered from whomsoever is found responsible.

3. This petition was examined by the earlier Bench which appointed one member committee under Mr. N.V. Merani, retired Principal Secretary to the Government of Maharashtra. The committee was expected to make its report with respect to the questions of negligence, if any, in the matter of construction of the bridge and what remedial measure ought to be taken. Paragraph 5 of the order dated 12.10.2006 recorded the questions which were referred for consideration of the committee which are as follows:

i) Whether the design of the said foot overbridge was faulty?

ii) Whether the structural failure of the said bridge was due to faulty construction including use of substandard material?

iii) Whether there was any negligence on the part of the Engineer/ Architects who supervised the aforesaid foot overbridge?

iv) Whether there was any negligence on the part of the Engineers who were incharge of maintenance of the said bride?

v) Whether there was any negligence on the part of the contractor in carrying out the construction.

4. Mr.Merani has gone into these aspects and has specifically made his report on the above referred five questions which were referred to him and he has observed as follows:

i) With respect to the design of the bridge he says that there were some deficiencies and that the same was not done in a professional manner. He has, however, concluded that the draw backs are not such as would cause failure ordinarily under normal floods. The main cause for the collapse is the abnormal flood on 26th July 2005.

ii) On the second question with respect to the faulty construction and use of sub-standard material, he has held that no evidence was available in support of such finding.

Iii) On the third question of negligence of the Engineers/ Architects, who supervised the aforesaid foot overbridge, again he observed that no material has been found. He has, however,

noted that there was nothing on record to show that the foundations for piers were passed by the Executive Engineer or Asst Engineer.

iv) On the fourth question whether there was negligence on the part of the Engineers who were incharge of maintenance of the said bridge, again he has stated that nothing could be specifically said.

v) The fifth question referred to him was with respect to the negligence on the part of the contractor in carrying out the construction of the bridge. Here again he has held that no specific finding could be arrived.

5. Mr. Merani has, however, made number of observations which are relevant and which the Corporation should keep in mind in future. He recorded that the design which was prepared did not bear signature or date nor there was any record of its having been checked. In fact design circle of PWD has pointed out number of deficiencies in the manner in which the design was prepared by the MCGM. In paragraph 4.2 all these deficiencies are recorded. In paragraph 4.3(b) he has recorded that the choice of the type of bridge for this foot bridge is not ideal one. He has subsequently noted that there was no mention of hydraulic design and hydraulic investigations in the

papers. This is recorded in paragraph 5.5. Thus on the one hand Mr Merani has specifically recorded that there was no finding of negligence which he could arrive at and on the other hand he points out several deficiencies in the manner in which the record of the Corporation was maintained. For future he has also number of suggestions which are recorded in paragraph 7 of his report.

6. Ms Rao for the petitioner criticised the role of respondent no. 3 Municipal Corporator from the same area. She contends that respondent no. 3 had played the role as an Architect but no such inference can be drawn merely on the basis of the plaque that was placed at the site. Respondent No. 3 is herself an Architect by qualification and, therefore, has been referred as an Architect and Corporator. However, merely on that, one cannot draw an inference that she was an architect for the purpose of bridge.

7. The bridge in question is a small bridge and the amount spent is about Rs. 5 lacs. The bridge having been washed away new bridge has been constructed at the cost of Rs.13 lacs. All that is required in future is that the Corporation should keep in mind the suggestions made by Mr. Merani.

8. In the earlier order the division bench has recorded that Mr. Merani will be compensated for the assistance that he has rendered by making this report. The Municipal Corporation is directed to pay an amount of Rs. 25,000/- to Mr. Merani within two weeks towards his professional charges.

Petition stands disposed of accordingly.

ACTING CHIEF JUSTICE

V.M.KANADE, J.